

12-19-01

3374 (PHA 4140)
PATENT

OAI/1651

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Application of M. Obukowicz et al. Art Unit 1651
Serial No. 09/737,892
Filed December 15, 2000
Confirmation No. 2003
For SELECTIVE COX-2 INHIBITION FROM EDIBLE PLANT EXTRACTS
Examiner M. Meller

December 12, 2001

#5
M.G.J
12/27/01RESPONSE TO RESTRICTION REQUIREMENT

TO THE ASSISTANT COMMISSIONER FOR PATENTS,

SIR:

In response to the Office action of October 24, 2001, the time for response to which is extended to December 24, 2001, by the attached payment of the fee required under 37 C.F.R. §1.136(a), in which an election of species for prosecution on the merits was requested.

According to 35 U.S.C. §121, a restriction is proper only if there are at least two independent and distinct inventions. Furthermore, "[i]f the search and examination of an entire application can be made **without serious burden**, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions."¹

In this case, restriction is not proper. Claims 1-93 are currently pending. These claims are **all** generally directed toward organic extracts isolated from various edible plants that selectively inhibit the enzyme COX-2. Any search of the prior art and examination involving such an extract from one edible plant species, therefore, will necessarily co-extend with the search and examination of edible plants belonging to other species. Further, the prior art regarding edible plant extracts that selectively inhibit COX-2 is sufficiently sparse to allow

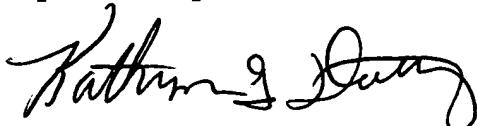
¹ MPEP § 803 (emphasis added).

the examination of all these claims without undue burden. Thus, as the examination of the entire application may be made without serious burden, claims 1-93 should be examined in accordance with MPEP § 803 without an election of species.

Applicants, subject to the foregoing traverse, hereby elect the edible plant of the genus *Vitex* and of the species *agnus-castus* for prosecution on the merits. Claims 1-5, 35, 37, and 78-93 read on the elected species.

Applicants reserve the right to file divisional applications directed to the subject matter of the non-elected claims.

Respectfully submitted,



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Express Mail No.: EL 801513343 US

FEE TRANSMITTAL

Application Number 09/737,892
Filing Date December 15, 2000
Confirmation No. 2003
Inventor(s) M. Obukowicz et al.
Group Art Unit 1651
Examiner Name M. Meller
Attorney Docket Number 3374 (PHA 4140)



METHOD OF PAYMENT

The Commissioner is hereby authorized to charge the indicated fees to Deposit Account No. 19-1345.

The Commissioner is hereby authorized to charge any additional fees required under 37 CFR 1.16 and 1.17 to Deposit Account No. 19-1345.

Applicant claims small entity status.

2. Check Enclosed. The Commissioner is hereby authorized to charge any under payment or credit any over payment to Deposit Account No. 19-1345.

FEE CALCULATION

1. BASIC FILING FEE Subtotal (1) \$ _____
(Type: _____)

2. EXTRA CLAIM FEES Subtotal (2) \$ _____

Total Claims _____
Independent Claims _____
Multiple Dependent Claims _____

3. ADDITIONAL FEES Subtotal (3) \$ 110.00

Surcharge - late filing fee or oath
 Surcharge - late provisional filing fee or cover sheet
 Extension for reply within 3rd month
 Notice of Appeal
 Filing a Brief in Support of an appeal
 Request for ex parte Reexamination
 Petitions to the Commissioner
 Submission of Information Disclosure Statement
 Recording each patent assignment per property
 Request for Continued Examination
 Other: _____

TOTAL AMOUNT OF PAYMENT \$ 110.00

Kathryn J. Doty
Kathryn J. Doty, Reg. No. 40,593

December 12, 2001
Date

KJD/rle

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